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9 IN THE UNITED STATES DISTRICT COURT

10 DISTRICT OF ALASKA  
11

|                             |   |                                  |
|-----------------------------|---|----------------------------------|
| 12 Sally C. Purser,         | ) |                                  |
|                             | ) | DEFENDANT JOSEF BOEHM'S          |
| 13 Plaintiff,               | ) | OPPOSITION TO PLAINTIFF'S MOTION |
|                             | ) | TO STRIKE UNAUTHORIZED SURREPLY  |
| 14 v.                       | ) |                                  |
|                             | ) |                                  |
| 15 Josef F. Boehm, Allen K. | ) |                                  |
| Bolling, and Bambi Tyree,   | ) |                                  |
|                             | ) |                                  |
| 16 Defendants.              | ) |                                  |
|                             | ) |                                  |
| 17                          | ) |                                  |
|                             | ) |                                  |
| 18                          | ) |                                  |
|                             | ) |                                  |

19 CASE NO.: A05-0085 (JKS)

20 I. INTRODUCTION

21 Plaintiff filed her Second Motion for Summary Judgment on  
22 December 14, 2006. The Motion was filed without the attached  
23 affidavits of Plaintiff and former defendant Bambi Tyree. Plaintiff  
24 omitted their attachment due to her desire to have them filed under  
25 seal. The affidavits were the sole support for the Motion. Even  
26 without the inclusion of the affidavits, the statutory period  
27 continued to run to the detriment of Boehm.  
28

Plaintiff argues:

1. "Josef Boehm and his legal team obviously have no respect for Court Rules". *Page 1*;

2. "Boehm knowingly and intentionally ignore Local Rule 7.1". *Page 1*; and

3. "The reply did not raise any new issues and the material sought to be filed with the surreply was obviously available long before his filed his opposition brief". *Page 2*.

Plaintiff's argument ignores:

1. The fact that the affidavits supporting summary judgment were not received by Defense counsel until December 22, 2006 (eight days after filing);

2. The Motion was filed while Defense counsel was in Anchorage Alaska;

3. The statutory response period encompassed the Christmas and New years Holidays; and

4. The Supplemental Reply contains new argument

**I. BOEHM WAS NOT PROVIDED THE FULL STATUTORY PERIOD IN WHICH TO RESPOND TO PLAINTIFF'S SUMMARY JUDGMENT MOTION AS THE AFFIDAVITS SUPPORTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WERE NOT RECEIVED FOR NINE DAYS AFTER FILING**

**A. Plaintiff Ignores the Delay in Providing the Crux of Her Motion to Defense Counsel**

Plaintiff filed her latest Motion for Summary Judgment on December 14, 2006. The response date was January 2, 2007. At the time of filing, Boehm's counsel was in the state of Alaska taking the deposition of Plaintiff and Erin Axt. Plaintiff's counsel filed anyway.

1 The statutory period in which to respond was 18 days. The 18 day  
2 period included the Christmas and New Years holidays. Boehm's counsel  
3 was in Anchorage from Monday, December 11 - Friday, December 15, 2006.  
4 In an effort to return home and begin work on an opposition, Boehm's  
5 counsel took a "red eye" flight in order to return on December 15,  
6 2006.

7 Plaintiff's Motion for Summary Judgment relied on the affidavits  
8 of Plaintiff and of recently dismissed defendant Bambi Tyree.  
9 Plaintiff's counsel did not file the Motion for Summary Judgment with  
10 the attached affidavits due to their desire to file them under seal,  
11 however, the statutory period continued to run.

12 On Monday, December 18, 2006, (the next available business day),  
13 Boehm's counsel contacted plaintiff's counsel via telephone to request  
14 the attached affidavits in order to be able to respond. Counsel for  
15 Plaintiff and Defendant telephoned the Court to inquire about the  
16 legality of providing the affidavits due to their being filed under  
17 seal. The Court confirmed that the statutory response period was  
18 running.

19 Plaintiff's counsel provided the affidavits by mail. Boehm's  
20 counsel received Bambi Tyree's affidavit on December 20, 2006 and  
21 Purser's on December 22, 2006. *A true and correct "receipt stamped"*  
22 *copy is attached to the Declaration of Brett A. Greenfield as exhibits*  
23 *"A" and "B".*

24 Boehm's counsel could not begin a response until December 23,  
25 2006, one (1) day before Christmas Eve and nine(9)days after the  
26 motion had been filed!

27 Even with the shortened period in which to respond, Boehm's  
28 counsel filed a thirty (30) page response in a timely fashion on

1 Friday December 29, 2006, the day before the New years Holiday  
2 weekend.

3 The argument presented in the supplemental brief is crucial and  
4 should be considered by this Court as a finding of summary judgment  
5 completely alters the landscape of this litigation.

6 **B. Plaintiff's Failure to Timely Disclose**

7 The affidavits of Plaintiff and former Defendant Tyree were  
8 signed on November 30, 2006 but were not disclosed to Boehm's counsel  
9 until December 20 and 22, 2006. Worse yet, Boehm's counsel was in  
10 Anchorage, Alaska on December 12-15, 2006 for the deposition of  
11 Plaintiff. Her counsel purposely attempted to "sand bag" Defense  
12 Counsel by with withholding the affidavits which should have been the  
13 subject of her deposition. Defense counsel should have been able to  
14 question Plaintiff regarding these specific allegations which  
15 undoubtedly would have resulted in exposure of additional fraud and  
16 deceit.

17 Conversely, Defense counsel obtained the Declarations of Tina  
18 Arndt on December 14, 2006 and Vince Blomfield shortly thereafter,  
19 both of which were disclosed to Plaintiff's counsel in a timely  
20 fashion.

21 III.

22 Boehm's supplemental brief includes additional evidence and  
23 contradictions in which to show disputable issues of material fact and  
24 inferences to be drawn from the statements made by Purser and Tyree  
25 in support of summary judgment.

26 Boehm respectfully submitted the following additional evidence  
27 to be considered:

28 **1. Recorded Transcript of Miranda Ditullio**

1 Ms. Ditullio submitted to a interview with Boehm's investigator  
2 Terry Shurtleff, Ms. Ditullio's statements were recorded in the  
3 presence of her parents and with her consent. Her statements  
4 contradict Purser's allegations and lend further support to the  
5 evidence presented in Boehm's initial opposition.

6 Purser named Ms. Ditullio in her witness list, therefore, cannot  
7 claim to be surprised by her existence.

## 8 **2. Sworn Testimony of Dr. Jacobsen**

9 In response to Plaintiff's assertion that Dr. Jacobsen's report  
10 is not sworn testimony, Boehm's submits Dr. Jacobsen's sworn testimony  
11 confirming the contents of his report.

12 Dr. Jacobsen's testimony was taken from the sentencing hearing.  
13 Said transcripts were not received by Boehm's counsel until after the  
14 first opposition to summary judgment was filed. Furthermore, the  
15 transcripts of proceedings are public information at all times equally  
16 available to Plaintiff and her counsel.

## 17 **3. Declaration of Josef Boehm**

18 In response to Plaintiff's assertion that Boehm's responses to  
19 discovery are not sworn under penalty of perjury, Boehm submits a  
20 declaration specifically denying each of the allegations set forth in  
21 the Affidavit of Purser and Tyree, .

22 Plaintiff's counsel is well aware of the hurdles that Boehm's  
23 counsel faces in trying to contact him and present him with  
24 documentation. Purser's counsel argued that the discovery responses  
25 were not notarized knowing full well that obtaining a notary and  
26 clearing them to visit Boehm in a Federal Correctional Institution is  
27 almost impossible at best.

## 28 **4. Declaration of Terry Shurtleff**

1 Mr. Shurtleff's declaration under penalty of perjury sets forth  
2 the circumstances under which his interviews were knowingly recorded,  
3 accurately recorded and accurately transcribed.

4 Boehm thought it important to satisfy this honorable Court that  
5 all interviews presented as impeachment evidence be supported with an  
6 affidavit of their accuracy.

7 **5. Plaintiff's Expert Dr. Rose, Psychological Evaluation of**  
8 **Purser.**

9 Boehm submits Dr. Rose's report to bring out her inconsistent  
10 statements and lack of candor when being interviewed by her own  
11 expert. In addition, Dr. Rose's report is very telling when describing  
12 Purser's psychological state and character type.

13 Plaintiff intends to rely on the testimony of dr. Rose at trial.  
14 Certainly, it is relevant to show he inconsistency in which Plaintiff  
15 tells her story and the scattered facts presented to Dr, Rose for the  
16 purpose of expert opinion and testimony.

17 **6. Sally Purser Deposition Testimony**

18 Additional comparisons of Purser's deposition testimony to  
19 statements given to her own expert Dr. Rose reveal significant  
20 discrepancies and contradiction leading to a conclusion that inference  
21 must be drawn from present statements and genuine issues of material  
22 fact.

23 As stated earlier, the time period in which the motion was filed  
24 coupled with the time discrepancy in which the affidavits were  
25 presented to defense counsel left them in a position of having to get  
26 an opposition filed in a shortened period of time, all to the  
27 prejudice of Boehm.  
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